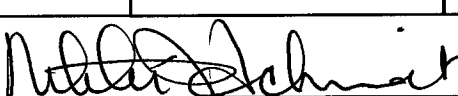
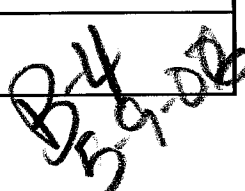
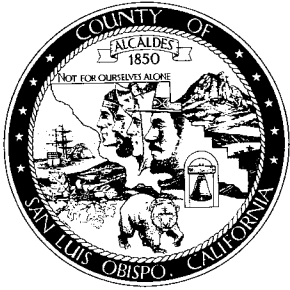


COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS

AGENDA ITEM TRANSMITTAL

(1) DEPARTMENT General Services		(2) MEETING DATE May 9, 2006		(3) CONTACT/PHONE Duane P. Leib (805) 781-5200		iw/cm
(4) SUBJECT Request to: (1) Approve a First Amendment to the lease Agreement between the County of San Luis Obispo and Dennis Ahearn, which will extend the term and assign the lease Agreement to Superior Court of California, County of San Luis Obispo; and (2) Approve a Memorandum of Understanding (MOU) between the County of San Luis Obispo and San Luis Obispo County Superior Court of California						
(5) SUMMARY OF REQUEST Approval of the First Amendment will: (1) Assign the Agreement for approximately 6,210 square feet of improved office space located at 1120 Mill Street in San Luis Obispo to Superior Court of California; and (2) Extend the Agreement for a five year period at the same favorable terms and conditions. Approval of the MOU will serve to clarify the terms and conditions upon which the County will fulfill its obligation to support Family Court Services in an approximate 2,075 square foot portion of 1120 Mill Street, which will also be occupied by other Courts programs.						
(6) RECOMMENDED ACTION The Department of General Services recommends your Board: (1) Approve the First Amendment as presented and direct the Chairperson to sign the document; and (2) Approve the MOU as presented and direct the Chairperson to sign the document.						
(7) FUNDING SOURCE(S) Cost Center 11307 Account #5050405		(8) CURRENT YEAR COST \$41,035.20		(9) ANNUAL COST \$38,072.52		(10) BUDGETED? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): County Counsel, Superior Court of the State of California						
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____						
(13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input type="checkbox"/> 2nd, <input checked="" type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input type="checkbox"/> All			(14) LOCATION MAP <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board	
(16) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(17) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig + 4 copies) <input checked="" type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> N/A			
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A			(19) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A			
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) _____			(21) W-9 <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		(22) Agenda Item History <input type="checkbox"/> N/A Date <u>3/10/98</u> B-1	
(23) ADMINISTRATIVE OFFICE REVIEW <div style="text-align: center; font-size: 2em; font-family: cursive;">  </div> <div style="text-align: right; font-size: 2em; font-family: cursive;">  </div>						



COUNTY OF SAN LUIS OBISPO

department of general services

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5200

DUANE P. LEIB, DIRECTOR

TO: BOARD OF SUPERVISORS

FROM: *D. Leib*
DUANE P. LEIB, GENERAL SERVICES DIRECTOR

DATE: MAY 9, 2006

SUBJECT: REQUEST TO: (1) APPROVE A FIRST AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE COUNTY OF SAN LUIS OBISPO AND DENNIS AHEARN, WHICH WILL EXTEND THE TERM AND ASSIGN THE LEASE AGREEMENT TO SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO; AND (2) APPROVE A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE COUNTY OF SAN LUIS OBISPO AND SAN LUIS OBISPO COUNTY SUPERIOR COURT OF CALIFORNIA

RECOMMENDATION

The Department of General Services recommends your Board: (1) Approve the First Amendment as presented and direct the Chairperson to sign the document; and (2) Approve the MOU as presented and direct the Chairperson to sign the document.

DISCUSSION

Since 1988 the County of San Luis Obispo has leased 1120 Mill Street in San Luis Obispo. The property consists of approximately 6,210 square feet of improved office space. Over the years various County offices have occupied the property including the Grand Jury, Risk Management, Emergency Services, and most recently Information Technology. Your Board approved the current lease Agreement on March 10, 1998 (item B-1), for a period of five years with the right to two successive 3-year options. The first option was exercised in March of 2003 and was due to terminate on March 31, 2006.

With the completion of the new government center and the County Government Center Offices Consolidation project, the county planned to vacate the premises by March 31, 2006, as the space was no longer necessary for County programs. However, in January 2006, Superior Court representatives asking for market information relative to downtown office space approached Real Property Services (RPS). The Courts intended to lease office space large enough to consolidate several court programs scattered in multiple locations in the downtown area. As a result of the information provided by RPS, and after considering other locations Superior Court determined that the space being vacated by the County at 1120 Mill Street would best accommodate their program consolidation plan, but with additional space remaining.

B-4
B-2

During this same period the County was negotiating with Fiduciary Properties to extend its lease at 778 Osos, Suite C in San Luis Obispo, which currently houses Family Court Services. The County has leased this space since May 9, 1989, which consists of approximately 2,075 square feet of improved office space. This lease is a continuing County obligation for the benefit of Superior Court.

After some discussion it was determined that the Family Court Services program located at 778 Osos would be an appropriate program to consolidate with the other Court programs under one roof at 1120 Mill Street. The necessary 2,075 square feet of office space was available to accommodate this purpose.

There were two main issues surrounding the "joint venture" of this project; 1) Superior Court desired a 5-year lease extension based on the same favorable terms and conditions of the existing lease Agreement, Landlord agreement to the assignment and Landlord's willingness to allow Superior Court to assign the lease Agreement to the Administrative Offices of the Courts (AOC) if necessary; and 2) County desired a Memorandum of Understanding (MOU) clearly defining the County's obligations for a 2,075 square foot portion of the office space, which would continue to be used by Family Court Services.

The Landlord, Mr. Dennis Ahearn agreed to extend the lease agreement for a period of 5 years with the same favorable terms and conditions for Superior Court. He also agreed to the assignment of the lease Agreement to Superior Court (and subsequent assignment to the AOC if necessary and reasonable), thus eliminating the County from the responsibility and management of the lease.

The MOU between the County and Superior Court will require the County to pay Superior Court for the proportionate share of rent, utilities and janitorial service of the square footage occupied by Family Court Services, which equates to approximately 33.4% of the total building square footage.

This arrangement will not increase the County's obligation to Superior Court other than what has already been established.

OTHER AGENCY INVOLVEMENT

County Counsel has approved the First Amendment as to form and legal effect. Superior Court of California, San Luis Obispo County has reviewed and signed the First Amendment accepting the assignment and agreeing to the terms and conditions of the lease Agreement.

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D-3

FINANCIAL CONSIDERATIONS

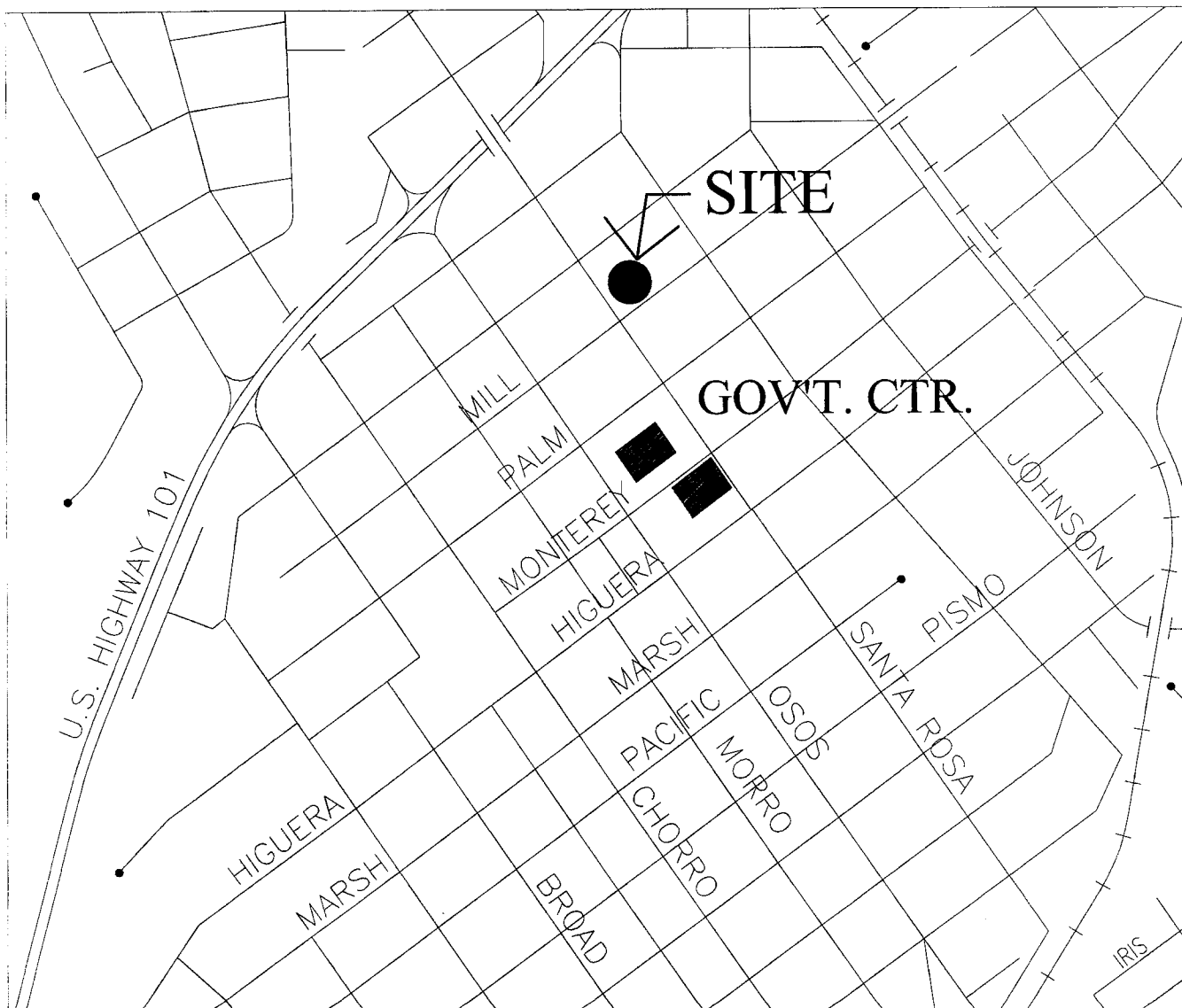
The County's obligation is to provide 2,075 square feet of improved office space to Superior Court for Family Court Services. Monthly rent at 778 Osos Street is currently \$3,419.60 or approximately \$1.65 gross per square foot. As of June 1, 2006 Fiduciary Properties will increase the rental amount to \$2.00 gross per square foot, or \$4,150.00 per month. This equates to a 21% rental increase. Moving Family Court Services to 1120 Mill Street will save the County \$977.29 per month or \$11,727.48 the first year in rental expenses.

The current monthly rental rate at 1120 Mill Street is \$9,495.20 per month for 6,210 square feet. The County's obligation for Family Court Services' portion of the rent is \$3,172.71 per month, which equates to approximately \$1.53 gross per square foot on a monthly basis.

RESULTS

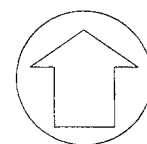
Approval of the First Amendment will allow Superior Court to consolidate services at 1120 Mill Street in San Luis Obispo, assume the current lease Agreement from the County at favorable terms and conditions, extend the lease Agreement for a period of 5-years, and allow Family Court Services to relocate to a portion of the building at considerable savings to the County.

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VICINITY MAP

1120 MILL STREET



NORTH

B-4
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FIRST AMENDMENT TO THE AGREEMENT BETWEEN

THE COUNTY OF SAN LUIS OBISPO

AND DENNIS AHEARN

Assignment of Lease Agreement

This Amendment is to that lease Agreement dated March 10, 1998 between the County of San Luis Obispo ("County" and/or "Assignor") and Dennis Ahearn, an individual, ("Landlord") to lease 6,210 square feet of improved office space located at 1120 Mill Street in the City of San Luis Obispo.

WHEREAS, said space is no longer necessary for County program purposes, however Superior Court of California, County of San Luis Obispo ("Superior Court" and/or "Assignee") desires to assume the lease agreement for the purpose of consolidating various court programs into a single location; and

WHEREAS, this assignment will benefit Superior Court by allowing a consolidation of staff and programs into one location; and

WHEREAS, the County of San Luis Obispo has historically furnished, i.e. prior to January 1, 1996, Superior Court with approximately 2,075 square feet of office space located in the City of San Luis Obispo; and

WHEREAS, Superior Court proposes to enter into an MOU to satisfy County's historical obligation of 2,075 square feet at this location; and

WHEREAS, Landlord has consented to the assignment of this lease Agreement; and

WHEREAS, Landlord further consents to an assignment to the State Administrative Office of the Courts should Superior Court request said assignment; and

WHEREAS, Superior Court and Landlord desire to extend the term of this Agreement for a total period of five (5) years; and

WHEREAS, Lessor desires, and Superior Court has agreed, that Superior Court will assume responsibility for replacing air conditioning filters and exterior light bulbs during the term of the Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and conditions herein set forth, County, Landlord, and Superior Court mutually covenant and agree as follows:

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1. That the aforesaid Lease between the County of San Luis Obispo and Dennis Ahearn be assigned to the Superior Court of California, County of San Luis Obispo, and all references to County, as Lessee shall hereafter be understood to refer to the Superior Court. Execution of this First Amendment to the aforesaid lease shall constitute all parties agreement to the assignment.
2. That should Superior Court of California need to further assign the lease as hereby amended to the State Administrative Office of the Courts, Landlord shall not unreasonably withhold consent of said assignment.
3. Superior Court has reviewed the aforesaid lease, has had the opportunity to review the Agreement with independent legal counsel and hereby assumes all the terms, covenants and conditions of the Agreement and agrees to fully and faithfully perform all the obligations of the County under said lease.
4. The lease term is hereby amended to expire March 31, 2011.
5. Superior Court shall assume responsibility for the replacement of air conditioning filters and exterior light bulbs for the term of the lease Agreement.

All other terms and conditions shall remain the same.

/////////////////NOTHING FURTHER PAST THIS POINT/////////////////

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IN WITNESS WHEREOF, County, Landlord and Superior Court have executed this Amendment No. 1 to the lease Agreement on the day and year set forth.

Assignor: COUNTY OF SAN LUIS
OBISPO

By: _____
Chairperson of the Board of
Supervisors

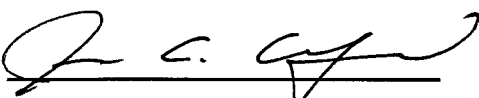
Approved by the Board of Supervisors
on
_____, 2006

ATTEST:

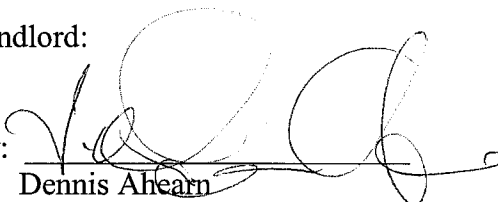
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND
LEGAL EFFECT:

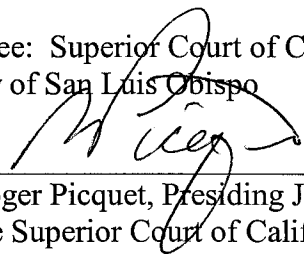
JAMES B. LINDHOLM, JR.
County Counsel

BY: 
DATE: 4/21/06

Landlord:

By: 
Dennis Ahearn

Assignee: Superior Court of California,
County of San Luis Obispo

By: 
Roger Picquet, Presiding Judge of
the Superior Court of California,
County of San Luis Obispo

B4
B8

**MEMORANDUM OF UNDERSTANDING
BETWEEN SAN LUIS OBISPO COUNTY SUPERIOR COURT OF CALIFORNIA AND
COUNTY OF SAN LUIS OBISPO**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and between the Superior Court of California, County of San Luis Obispo, hereinafter referred to as "Superior Court," and the County of San Luis Obispo, hereinafter referred to as "County," and will replace and supersede any and all previous written or verbal agreements made and entered into by and between Superior Court and County relative to the real property hereinafter described.

WHEREAS, the County of San Luis Obispo has historically furnished, i.e. prior to January 1, 1996, Superior Court with approximately 2,075 square feet of office space located in the City of San Luis Obispo; and

WHEREAS, the County has negotiated a Gross Rental Rate of approximately \$1.53 per square foot to accommodate this program; and

WHEREAS, pursuant to AB 233, the County of San Luis Obispo is responsible to continue furnishing said space until such time as other agreements are in place; and

WHEREAS, the County has leased 6,210 square feet of improved office space located at 1120 Mill Street in the City of San Luis Obispo, owned by Dennis Ahearn ("Lessor") for the purpose of accommodating other county programs; and

WHEREAS, said space is no longer needed for County program purposes however Superior Court desires to assume the lease agreement and remaining options on the lease for the purpose of consolidating other court programs into a single location, which would also include the 2,075 square foot obligation by the county; and

WHEREAS, Superior Court proposes to enter into an MOU to satisfy County's historical obligation of 2,075 square feet; and

WHEREAS, County agrees to pay Superior Court for 2,075 square feet, approximately 33.4% of the total square footage, at approximately \$1.53 Gross per square foot; and

WHEREAS, this agreement benefits Superior Courts by allowing a consolidation of staff in one location; and

WHEREAS, this agreement in no way obligates the County to continue to provide use of the subject space to Superior Court upon transfer of all court facilities pursuant to the Trial Court Facilities Legislation (Government Code, section 69202 et.seq)

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and conditions herein set forth, County and Superior Court mutually covenant and agree as follows:

1. **PREMISES**: County has allowed Superior Court to assume the lease agreement and remaining option periods of approximately 6,210 square feet of office space located at 1120 Mill Street in the City of San Luis Obispo, of which 2,075 square feet is the responsibility of County.

2. **TERM**: The term of this MOU shall be for a period of five years, or until such time as the County is released from its obligation to provide said space whichever comes first. This MOU may be extended upon mutual written agreement.

3. **RENT**: Superior Court shall pay Lessor rent of \$9,495.20 per month payable in advance on the first day of each month beginning April 1, 2006. County shall reimburse Superior Court for 2,075 square feet, approximately 33.4% of the total square footage, which equates to the sum of Three Thousand One Hundred and Seventy-Two Dollars and Seventy-One Cents (\$3,172.71), approximately \$1.53 Gross Rental Rate per square foot, per month, payable in advance on the first day of each month beginning April 1, 2006. Each year that this MOU remains in effect, beginning July 1, 2006, and every subsequent annual anniversary date thereafter, the preceding year's rent shall be adjusted upward according to any percentage rise in the Consumer Price Index (CPI).

The term "Consumer Price Index" refers to the Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles - Anaheim - Riverside Statistical Area, California, based on the period of 1982-84 = 100 as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

The index for the adjustment date shall be the one reported in the U.S. Department of Labor's most comprehensive official index then in use and most nearly answering the foregoing description of the index to be used. If it is calculated from a base other than the base period (1982-84=100), the base figure used for calculating the adjustment percentage shall first be converted under a formula supplied by the Bureau.

If the described index is no longer published, another generally recognized as authoritative shall be substituted.

Superior Court shall provide written notice to County of each adjusted rental amount on an annual basis. If the rent is not adjusted at the time for said adjustment as provided herein, County shall continue to pay the annual rent established for the prior period until such adjustment is made, at which time County shall promptly pay to Superior Court any deficiency and shall henceforth pay at the adjusted rate of rent.

4. **IMPROVEMENTS**: Superior Court shall not make, or suffer to be made, any alterations (whether major or minor) of the Premises, or any part thereof, without the written consent of Lessor first had and obtained.

5. **USE OF PREMISES**: The Premises shall be used for business of the Superior Court and for no other purpose.

6. **UTILITIES**: Superior Court will pay, during the term of this MOU and any extensions or renewals thereof, all water, sewer, garbage disposal and telephone service charges used by Superior Court during its occupation of the Premises. County shall pay its pro rated share, Thirty-Three and Four-Tenths percent (33.4%) of gas and electric service exclusively used by Superior Court. Superior Court shall maintain any and all fire suppression systems and any existing fire detection systems according to the requirements of San Luis Obispo City Fire Department.

7. **JANITORIAL SERVICE**: The Superior Court shall arrange and pay for janitorial service. County shall pay its pro rata share, Thirty-Three and Four-Tenths percent (33.4%), for janitorial service.

8. **REPAIRS AND MAINTENANCE**: Superior Court, being responsible for the majority of the space, shall be responsible for contacting Lessor regarding any repairs and maintenance of the Premises and responsible for the replacement of light bulbs, including but not limited to the exterior light bulbs and the HVAC filters.

9. **DESTRUCTION OF PREMISES**: In the event of a partial destruction of the Premises during the term hereof, from any cause, County shall forthwith require Lessor to repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this MOU. In the event that repairs cannot be made within sixty (60) days, this MOU may be terminated at the option of either party.

A total destruction of the building in which the Premises are situated shall terminate this MOU.

10. **NOTICES**: Any notices, demands, or communication, under or in connection with this MOU, may be served upon Superior Court by personal service, or by mailing the same by certified mail in the United States Post Office, postage prepaid, and directed to Superior Court of California, County of San Luis Obispo, County Government Center, San Luis Obispo, CA 93408, ATTN: Court Executive Officer, and may likewise be served on County by personal service or by so mailing the same addressed to General Services at 1087 Santa Rosa Street, San Luis Obispo, CA 93408, ATTN: Real Property Services. Either Superior Court or County may change such address by notifying the other party in writing of such change, which address shall continue as the address until further written notice.

11. **ASSIGNMENT**: This MOU is of a personal nature and Superior Court shall not assign, sublet, pledge or otherwise transfer this MOU.

12. **INDEMNIFICATION**: Superior Court shall defend, indemnify and save harmless the County, its officers, agents and employees, from any and all claims, demands, damages, costs, expenses, judgments, including but not limited to those predicated upon theories of violation of statute, ordinance, or regulation, professional malpractice, negligence, or recklessness including negligent or reckless operation of motor vehicles or other equipment, furnishing of defective or dangerous products or completed operations, Premises liability, inverse condemnation, violation of civil rights and also including any adverse determination

made by the Internal Revenue Service or the State Franchise Tax Board with respect to Superior Court's "independent contractor" status that would establish a liability for failure to make social security and income tax withholding payments, or any act or omission to act, whether or not it be willful, intentional or actively or passively negligent on the part of the Superior Court or its agents, employees or other independent Contractors directly responsible to Superior Court; providing further that the foregoing shall apply to any wrongful acts or any active or passively negligent acts or permissions to employees or other independent contractors and County, its agents, employees or independent professional contractors involved in this MOU. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demands, damages, costs, expenses, judgments, attorney fees resulting solely from the negligence or willful misconduct of the County, its agents, employees or other independent Contractors.

13. ENVIRONMENTAL MATTERS/COVENANTS REGARDING HAZARDOUS MATERIALS: Superior Court shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under such laws, ordinance or regulations.

Superior Court shall further indemnify, defend, protect, and hold each other free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses (including attorneys' fees) or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by:

(A) the presence in, on, under or about the premises, or discharge in or from the premises, of any Hazardous Materials, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the premises, or

(B) Superior Court's failure to comply with any Hazardous Materials Law. Superior Court's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith, and shall survive the expiration or earlier termination of the term of this MOU. For purposes of the release and indemnity provisions hereof, any acts or omissions of Superior Court, or by employees, agents, assignees, contractors or subcontractors of Superior Court or others acting for or on behalf of Superior Court (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Superior Court.

14. SEVERABILITY: The invalidity of any provision of this MOU shall not affect the validity, enforceability or any other provision of this MOU.

15. REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this MOU is not exclusive and shall not deprive the party

using such remedy of, or limit the application of, any other remedy provided by law.

16. **LAW:** This Lease has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this MOU shall be determined and governed by the laws of the State of California.

17. **VENUE:** San Luis Obispo County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this MOU.

18. **ENTIRE AGREEMENT AND MODIFICATIONS:** This MOU supersedes all previous MOU's and constitutes the entire understanding of the parties hereto. Superior Court shall be entitled to no other benefits than those specified herein. No changes, amendments, or modifications shall be effective unless in writing and signed, in advance of the effective date of the change, amendment or modification, by both parties. Superior Court specifically acknowledges that in entering into this MOU, Superior Court relies solely upon the provisions contained in the MOU and no other MOU's or oral discussions prior to entering this MOU.

/////////////////////////////////NOTHING FURTHER PAST THIS POINT/////////////////////////////////

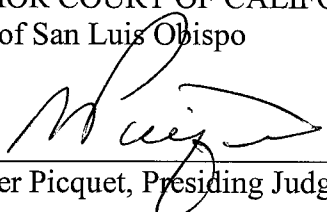
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IN WITNESS WHEREOF, the parties hereto have executed this MOU.

COUNTY OF SAN LUIS OBISPO

SUPERIOR COURT OF CALIFORNIA
County of San Luis Obispo

By: _____

By: 
Roger Picquet, Presiding Judge

Date: _____

Date: 4-13-06

APPROVED AS TO FORM AND LEGAL EFFECT

James B. Lindholm, Jr.
County Counsel

By: 
Deputy County Counsel

Date: 4/24/06

Approved by the Board of Supervisors on
_____, 2006

ATTEST:

Clerk of the Board of Supervisors

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